

Overview

A state agency may not make a deduction from the compensation paid to an officer or employee whose compensation is paid in full or in part from state funds unless the deduction is specifically authorized by law. See TEX. GOV'T CODE ANN. § 659.002(a) (Vernon Supp. 2000). For this purpose, **state agency** means:

- A board, commission, department, office, or other agency that is in the executive branch of state government and that was created by the constitution or a statute of this state, including an institution of higher education as defined by TEX. EDUC. CODE ANN. § 61.003 (Vernon Supp. 2000); or
- The legislature or a legislative agency; or
- The supreme court, the court of criminal appeals, a court of appeals, the state bar, or another state judicial agency. TEX. GOV'T CODE ANN. § 659.002(b) (Vernon Supp. 2000).

A deduction may not be made from the salary or wages of a state employee because the employee is called for jury service, including a deduction for any fee or compensation the employee receives for the jury service. TEX. GOV'T CODE ANN. § 659.005(a) (Vernon Supp. 2000).

The following is a list of authorized deductions:

- Administrative fees for child support deductions
- Administrative fees for wage garnishment
- Administrative wage garnishments to pay federal non tax debts
- Assignment, transfer, or pledge of wages as security for an indebtedness
- Bankruptcy
- Cafeteria plan contributions
- Charitable contributions
- Child support withholding
- Contributions to institutions of higher education or nonprofit organizations that support those institutions
- Credit unions, payments to
- Deferred compensation (Section 403(b) plans)
- Deferred compensation (Section 457 plan, other than a Section 457(f) program)
- Deferred compensation (Section 457(f) program)

- Employee organizations, payment of membership fees to
- English courses for faculty members
- Excess payment of compensation, recoupment of
- Extra federal income tax withholding
- Federal income tax withholding from payments that are not “wages”
- Federal income tax withholding from wages
- Federal Insurance Contributions Act withholding (for social security and Medicare)
- Football coaches plan, contributions to a qualified
- Goods and services provided to employees
- Group insurance plans (other than cafeteria plans)
- Levies from the Internal Revenue Service
- Life insurance premiums, permanent
- Loan repayment (Section 401(k) deferred compensation plan)
- Local income tax withholding
- Parking fees
- Prepaid higher education tuition program
- Retirement plan contributions, mandatory
- Retirement plan contributions, voluntary
- Retirement service credit, purchasing
- Savings bonds purchases
- Spousal maintenance, garnishments for
- State income tax withholding
- Student loan garnishments
- TexaSaver (Section 401(k) deferred compensation plan)

Administrative Fees for Child Support Deductions

Applies to:

Each state agency or institution of higher education.

Sources:

Tex. Fam. Code Ann. §§ 101.010, 101.014, 101.022 (Vernon 1996), §§ 101.011-101.012, 158.204 (Vernon Supp. 2000); 42 U.S.C.A. § 666(a)(1)(A), (b)(6)(A)(i) (West Supp. 1999).

Discussion:

An employer may deduct an administrative fee of not more than \$10 each month from the obligor's disposable earnings in addition to the amount to be withheld as child support.

For the purpose of this deduction:

- **Disposable earnings** means the part of the earnings of an individual remaining after the deduction from those earnings of:
 - Any amount required by law to be withheld; and
 - Union dues; and
 - Nondiscretionary retirement contributions; and
 - Medical, hospitalization, and disability insurance coverage for the obligor and the obligor's children.
- **Earnings** means a payment to or due an individual, regardless of source and how denominated. The term includes a periodic or lump sum payment for:
 - Wages, salary, compensation received as an independent contractor, overtime pay, severance pay, commission, bonus, and interest income; and
 - Payments made under a pension, an annuity, workers' compensation, and a disability or retirement program; and
 - Unemployment benefits.
- **Employer** specifically includes a governmental entity.
- **Governmental entity** means the state, a political subdivision of the state, or an agency of the state.
- **Obligor** means a person required to make payments under the terms of a support order for a child.

Administrative Fees for Wage Garnishment

Applies to:

Each state agency or institution of higher education.

Source:

Tex. Civ. Prac. & Rem. Code Ann. § 63.006 (Vernon Supp. 2000).

Discussion:

The following applies only to an employer who is required by state or federal law to deduct from the current wages of an employee an amount garnished under a withholding order. The employer may deduct monthly an administrative fee from the employee's disposable earnings in addition to the amount required to be withheld under the withholding order. The amount of the fee may not exceed the lesser of: (1) \$10; or (2) the actual administrative cost incurred by the employer in complying with the withholding order. This does not apply to income withholding under Chapter 158, Family Code.

For the purpose of these administrative fees, **withholding order** means:

- A withholding order issued under 20 U.S.C.A. § 1095a (West 2000); or
- Any analogous order issued under a state or federal law that requires the garnishment of an employee's current wages and does not contain an express provision authorizing or prohibiting the payment of the administrative costs incurred by the employer in complying with the garnishment of the affected employee.

Administrative Wage Garnishments to Pay Federal Nontax Debts

Applies to:

Each person employed by a state agency or an institution of higher education.

Sources:

31 U.S.C.S. §§ 3701(a)(4), (8), (b)(1), 3720D (a), (b)(1), (6), (f)(1)(B), (3), (g) (Law. Co-op 2000); 31 C.F.R. § 285.11(b)(2), (c)-(d), (g), (i)(1)-(2), (3)(i)-(ii), (4)-(6), (8), (j), (o) (2000. See 31 C.F.R. §285.11(b)(1) (2000)

Discussion:

The head of an “executive, judicial, or legislative agency”¹ that administers a program that gives rise to a “delinquent”² “nontax”³ “debt”⁴ owed to the United States by an individual may garnish the disposable pay of the individual to collect the amount owed if the individual is not currently making required repayment in accordance with any agreement between the agency head and the individual.⁵ The regulation adopted by the Department of the Treasury agrees with this authorization except that the authorization is of the agency instead of the head of the agency.

¹The term means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the government, including government corporations. The regulation of the Department of the Treasury that defines “agency” agrees with the preceding definition except the regulation: (1) specifically refers to “federal government” instead of “government”; and (2) says that “agency” means either the agency that administers the program that gave rise to the debt or the agency that pursues recovery of the debt.

²A nontax debt is “delinquent” if the debt has not been paid by the date specified in the agency’s initial written demand for payment, or applicable agreement, unless other satisfactory payment arrangements have been made.

³The term means, with respect to any debt or claim, any debt or claim other than a debt or claim under the Internal Revenue Code of 1986.

⁴The term means, any amount of money, funds, or property that has been determined by an appropriate official of the federal government to be owed to the United States by an individual. The term includes, but is not limited to: (A) funds owed on account of loans made, insured, or guaranteed by the government, including any deficiency or any difference between the price obtained by the government in the sale of a property and the amount owed to the government on a mortgage on the property; and (B) expenditures of nonappropriated funds; and (c) over-payments, including payments disallowed by audits performed by the inspector general of the agency administering the program; and (D) any amount the United States is authorized by statute to collect for the benefit of any person; and (E) the unpaid share of any non-federal partner in a program involving a federal payment and a matching, or cost-sharing, payment by the non-federal partner; and (F) any fines or penalties assessed by an agency; and (G) other amounts of money or property owed to the government. “Government” in the preceding sentence probably means the federal government.

⁵This garnishment authorization applies notwithstanding any Texas statute or constitutional provision.

However, if the individual has been reemployed within twelve months after having involuntarily separated from employment, no amount may be deducted from the individual's disposable pay until the individual has been reemployed continuously for at least twelve months. The treasury regulation says that this exemption applies only if the garnishing agency knows about the individual's involuntary separation from employment. The treasury regulation says that it is the individual's burden to inform the agency about the circumstances surrounding the involuntary separation.

The amount garnished for any pay period may not exceed 15 percent of the individual's disposable pay, except that a greater percentage may be deducted with the individual's written consent. The treasury regulation says that the amount of a garnishment shall be the lesser of: (1) the amount indicated on the garnishment order up to 15 percent of the individual's disposable pay; or (2) the amount by which the individual's disposable pay exceeds an amount equal to thirty times the minimum wage.⁶ The treasury regulation says that if amounts are being withheld under a withholding order that has priority over a withholding order issued under the statutes is the lesser of: (1) the amount calculated under the preceding sentence; and (2) 25 percent of the individual's disposable pay less the amount withheld under the withholding orders that have priority. The treasury regulation says that, in every case, a greater amount may be garnished with the individual's written consent.

Disposable pay means that part of the "compensation" of the individual from an "employer"⁷ remaining after the deduction of any "amounts required by law to be withheld." The treasury regulation agrees with the preceding definition except that health insurance premiums also are deducted from compensation to arrive at "disposable pay." "Compensation" includes, but is not limited to, salary, bonuses, commissions, and vacation pay. "Amounts required by law to be withheld" includes "amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order."⁸

⁶The thirty-times-the-minimum-wage limitation comes from the Consumer Credit Protection Act. See U.S.C.S. § 1673(a)(2) (Law. Co-op. 2000); 29 C.F.R. § 870.10(a)(2) (2000).

⁷The term means a person or entity that employs the services of others and that pays their wages or salaries. The term specifically includes, but is not limited to, a state government.

⁸See "Important Notice to Employer" in the administrative wage garnishment package adopted by the Department of the Treasury, which says that the following are deducted from compensation to arrive at "disposable pay": (1) federal, state, and local taxes; and (2) state unemployment and disability taxes; and (3) social security taxes; and (4) involuntary pension contributions. The notice says that the following are *not* deducted from compensation to arrive at "disposable pay": (1) voluntary pension or retirement plan contributions; and (2) union dues; and (3) amounts withheld pursuant to a court order; and (4) "the like."

An individual's disposable pay is garnished through the issuance of a withholding order to the individual's employer.⁹ After receipt of the order, the employer shall deduct from all disposable pay paid to the individual each pay period the amount garnished and promptly pay that amount to the agency that issued the order. The employer, however, is not required to vary its normal pay and disbursement cycles to comply with the withholding order. The employer shall continue deducting the amount garnished until the employer receives notification from the agency to discontinue the withholding.

A withholding order issued under the statutes cited above has priority only over other withholding orders that are served later in time. Notwithstanding the preceding sentence, a withholding order for family support always has priority over a withholding order issued under the statutes cited above.

Assignment, Pledge, or Transfer of Salary or Wages as Security for Indebtedness

Applies to:

Each person employed by an institution of higher education in an executive, administrative, or clerical capacity or as a professor, instructor, or in any similar capacity.

Sources:

TEX. EDUC. CODE ANN. § 51.934(a)-(c) (Vernon 1996). See Op. Tex. Att'y Gen. No. MW-566 (1983). See also Tex. Att'y Gen. LO-96-51 (1996).

Discussion:

Certain persons employed by institutions of higher education may assign, pledge, or transfer any interest in or part of the their salary or wages as security for an indebtedness.

State law specifies the procedures that must be followed before a person may do this. If those procedures are followed, an institution of higher education must honor the assignment, pledge, or transfer. This probably means that the institution must make deductions from the person's salary or wages.

⁹The form adopted by the Department of the Treasury for withholding orders is form SF-329B.

Bankruptcy

Applies to:

Each state agency or institution of higher education.

Sources:

11 U.S.C.A. §§ 101(15), (27), 1302(b)(5), 1321, 1322(a)(1)-(2), 1325(a), (c) (West 1993); COLLIER ON BANKRUPTCY, ¶¶ 1300.01-1300.02, 1300.46 (15th ed. rev. 1999); TEX. GOV'T CODE ANN. § 659.002(d) (Vernon Supp. 2000).

Discussion:

Chapter 13 of the Bankruptcy Code generally authorizes the restructuring of a person's debts so that the person is able to use future earnings to pay all or a substantial portion of those debts without being burdened by creditors' collection actions.

When a debtor declares bankruptcy under Chapter 13, the debtor does not always have a payroll deduction for the bankruptcy. The debtor must file a debt adjustment plan with the bankruptcy court. The plan must detail when and how the debtor will pay the debtor's debts. The plan takes effect if the bankruptcy court approves it. After the plan takes effect, the trustee assigned to the debtor is responsible for ensuring compliance with the plan. As much of the debtor's future earnings as is necessary to fulfill the plan must be subjected to the trustee's supervision and control. The bankruptcy court has discretion to order the debtor's employer to turn over all or part of the debtor's income to the trustee. This would be shown as a payroll deduction.

The payee number for this type of deduction consists of the employee's Texas identification number and a new mail code to represent the appropriate payee as listed on the court order. The following example shows how the name should be listed on the application: Ray Hendron, Trustee, for John Doe (Employee Name).

Cafeteria Plans Contributions

Applies to:

- A. Each state employee that may participate in the cafeteria plan administered by the Employees Retirement System of Texas (ERS).
- B. The University of Texas System and The Texas A&M University System.

Sources:

- A. Texas Employees Uniform Group Insurance Benefits Act, Tex. Ins. Code Ann. art. 3.50-2, §§ 13B(a), 14(h), 16B(b) (Vernon Supp. 2000); 34 TEX. ADMIN. CODE § 85.5(a) (1999); 24 Tex. Reg. 4952 (1999), adopted 24 Tex. Reg. 7276 (1999) (to be codified as an amendment to 34 TEX. ADMIN. CODE § 85.7(c)(1)-(2)).
- B. Texas State College and University Employees Uniform Insurance Benefits Act, Tex. Ins. Code Ann. art. 3.50-3, §§ 3(a)(7), (17), 4(e), 12(b), 14B(b) (Vernon Supp. 2000).

Discussion:

- A. ERS administers a cafeteria plan in which most state employees may participate. Two benefits currently are included in the plan: health care reimbursement and dependent care reimbursement. Participation in either benefit is optional. An employee who elects to participate must execute a salary reduction agreement to pay the employee's share of the cost of participation. (In general terms, a salary reduction agreement is equivalent to a payroll deduction authorization.) The election and the amount contributed each pay period are binding until the next annual enrollment period unless a "qualifying life event" occurs. A "qualifying life event" occurs when an employee experiences: (1) a change in marital status; or (2) a change in dependent status; or (3) a change in employment status; or (4) a change of address that results in loss of benefits eligibility; or (5) a change in Medicare or Medicaid status; or (6) a significant cost of benefit or coverage change imposed by a third party provider, other than a provider through the uniform group insurance program; or (7) a change in coverage ordered by a court.
- B. The governing board of The University of Texas System or The Texas A&M University System may design, adopt, implement, and administer a cafeteria plan. The **Texas A&M University System** means the entities governed under Chapters 85-88, Education Code, including the Texas Veterinary Diagnostic Laboratory. The governing board of a system may include in a cafeteria plan any benefit that may be included in a cafeteria plan under federal law.

Therefore, the benefits included in the cafeteria plans adopted by the respective governing boards may differ. An employee who participates in a system's cafeteria plan must execute a salary reduction agreement to pay the employee's share of the cost of participation. (In general terms, a salary reduction agreement is equivalent to a payroll deduction authorization.)

Charitable Contributions

Applies to:

Each state agency or institution of higher education.

Sources:

TEX. GOV'T CODE ANN. §§ 659.131(16), (18), 659.132(a), 659.136(a) (Vernon Supp. 2000); 24 Tex. Reg. 979, 980, 983 (1999) (to be codified as an amendment to 34 Tex Admin Code § 5.48(a)(3), (20), (d)(1)) (administrative rule governing deductions for contributions to charitable organizations, reprinted in Appendix A).

Discussion:

A state employee may authorize a deduction each pay period from the employee's salary or wage payment for a contribution to an eligible charitable organization. The employee may change or revoke the authorization at any time.

For the purpose of this deduction, **state employee** means an employee of a state agency. **State agency** means a department, commission, board, office, institution of higher education, or other agency of state government. **Institution of higher education** has the meaning assigned by TEX. EDUC. CODE ANN. § 61.003 (Vernon Supp. 2000), except that the term does not include a public junior college that has decided not to participate in the state employee charitable campaign program.

Note: See Section 5.48 in Appendix A for specific requirements. Appendix B provides a list of approved statewide federations or funds, approved local campaign managers, their Texas identification numbers, and their mailing addresses.

The state employee charitable campaign is conducted each fall during September and October. During the campaign, an existing employee may authorize the deduction for the next campaign year. For salary or wages paid once each month, the campaign year consists of the payroll periods from December 1st through November 30th. For salary or wages paid twice each month, the campaign year consists of the payroll periods from December 16th through December 15th. For salary or wages paid every other week by a state agency that is not an institution of higher education, the campaign year consists of the 26 consecutive payroll periods beginning with the period

that corresponds to the payment of salary or wages occurring on or closest to, but not after, December 31st. For salary or wages paid every other week by an institution of higher education, the campaign year consists of the 26 consecutive payroll periods beginning with the period designated by the institution if the period is entirely within December.

Agencies should report these deductions in the OTHER column of the Payroll Detail Sheet. The total deduction for each statewide federation or fund and local campaign manager must be listed in the NET AMOUNT column on separate deduct lines using the appropriate TINs. One TIN has been established for each statewide federation or fund and local campaign area. The TIN will generate a direct deposit transaction.

Child Support Withholding

Applies to:

Each state agency or institution of higher education.

Sources:

Tex. Fam. Code Ann. §§ 101.012, 158.011(a)-(b), 158.201-158.203, 158.206(b), 158.210, 158.501(a), 158.501(b), 158.504(b), 159.101(6), (19), (22), 159.501, 159.502(b), (c) (Vernon Supp. 2000), §§ 101.014, 158.405 (Vernon 1996).

Discussion:

A state agency must comply with a Texas court order, a Texas judicial writ of withholding, or a Texas administrative writ of withholding issued by the attorney general's office to deduct child support payments from the paycheck of an officer or employee.

A state agency must treat an income-withholding order issued in another state that appears regular on its face as if the order had been issued by a Texas tribunal. The agency must comply with the order even if a petition or comparable pleading has not been filed and regardless of whether the order has been registered with a Texas tribunal. The agency shall withhold and distribute the funds as directed in the order. For the purpose of this paragraph, "income-withholding order," "state," and "tribunal" have specific statutory meanings that are beyond the scope of this guide.

A Texas judicial writ of withholding is not limited just to cases in which the child support obligor opposes issuance of the writ. The obligor and the child support recipient may jointly request the clerk of a court to issue a writ of withholding to the obligor's employer.

Two options exist for setting up a child support deduction:

Option 1

Submit a payroll voucher including child support payments as a normal deduction, using the employee's TIN and new mail code for the recipient of support payment.

New employees who are required to have child support payment deductions should be set up with an employee TIN and a separate mail code for the child support recipient at the same time.

When transmitting the support payment to the appropriate party, the agency should provide any special mailing instructions or additional information required to identify the payment, such as court case number, name of employee making payment, or Attorney General case number.

Option 2

Issue a single warrant for multiple payers. One TIN has been established for payments to the attorney general's office: 33023023022008. This number must be used to generate one deduction warrant payable to the attorney general's office. You must send the attorney general's office a hard copy detail report containing the employee's name, deduction amount, and social security number with the deduction warrant. For more information, contact the attorney general's child support division.

Before submitting the report, verify the individual withholding amount is correct and the amounts total to the amount on the deduction warrant received from the Comptroller's claims division.

Employers who have questions about the income withholding process may contact one of the following divisions of the attorney general's office:

Topic	Contact Person	Division or Section	Telephone Number
General Information	Customer Support	Field Operations	1-800-252-8014
Employer Call Center	Employer Information	Customer Support	1-800-850-6442
Employer New Hire Reporting	Operations Center	Contract Services	1-888-839-4473
Automation of Child Support Payments	Carolyn Nesbitt	CIPS	(512) 460-6380 or e-mail Carolyn.Nesbitt@OAG.TX.US
Payment Coupons or Processing Form	Central File Maintenance	Customer Support	1-800-850-6442

Credit Unions, Payments to

Applies to:

Each state agency or institution of higher education.

Sources:

TEX. GOV'T CODE ANN. §§ 659.101, 659.103(a), 659.106-659.108 (Vernon Supp. 2000); 34 TEX. ADMIN. CODE § 5.47(a)(2), (5)-(7), (9), (11)-(12), (14)-(17), (19), (b)(2)(A)-(B), (6)(A), (c)(1)-(3), (e)(1)-(2), (g), (j)(1), (l)(2)-(3) (1999) (administrative rule governing deductions for payments to credit unions, reprinted in Appendix A).

Discussion:

For the purpose of this deduction, several important terms are specifically defined by law or administrative rule.

Definitions

- **Credit union** means a state credit union, an out-of-state credit union, a foreign credit union, or a federal credit union.
- **Federal credit union** means a credit union organized under the Federal Credit Union Act.
- **Foreign credit union** means a credit union that is organized under neither the laws of this state nor the United States if the credit union is authorized under the Texas Credit Union Act to do business in this state.
- **Holiday** means a state or national holiday as specified in the General Appropriations Act or TEX. GOV'T CODE ANN. §§ 662.001-662.010 (Vernon 1994 & Supp. 2000).
- **Institution of higher education** has the meaning assigned by TEX. EDUC. CODE ANN. § 61.003 (Vernon Supp. 2000).
- **Out-of-state credit union** means a credit union organized under the laws of a state other than Texas if the credit union is authorized under the Texas Credit Union Act to do business in this state.
- **Participating credit union** means a credit union that the Comptroller has certified in accordance with the Comptroller's administrative rule governing this deduction.
- **Salary or wages** means base salary or wages, longevity pay, or hazardous duty pay.
- **State agency** means a department, commission, board, office, or other agency of any branch of Texas state government, including an institution of higher education.

- **State credit union** means a voluntary, cooperative, nonprofit financial institution that is authorized under the Texas Credit Union Act to do business in this state for certain purposes specified in that law.
- **State employee** means an employee of a Texas state agency. The term includes an elected or appointed official, a part-time employee, an hourly employee, a temporary employee, an employee who is not covered by the Position Classification Act, and a combination of the preceding. The term excludes an independent contractor and an employee of an independent contractor.
- **Workday** means a calendar day other than Saturday, Sunday, or a holiday.

Note: See Section 5.47 in Appendix A for specific requirements. See also Appendix F for a list of participating credit unions, their Texas identification numbers, and their mailing addresses.

Authorizations of Deductions

A state employee may authorize not more than three monthly deductions from the employee's salary or wages for payments to participating credit unions to be credited to a share or deposit account of the employee. The employee may not, however, authorize more than one monthly deduction to any particular participating credit union. The employee may provide the authorization only by properly completing an authorization form and submitting the form to the credit union to which the deducted amounts will be paid.

Authorization Forms

As a condition for retaining its certification, a participating credit union must produce an authorization form to be used by employees to authorize, change, and cancel deductions to the credit union. The credit union may not distribute or provide the form to a state employee before the credit union has received the Comptroller's written approval of the form. Exhibit 4.1 is a sample of an authorization form that complies with the Comptroller's requirements. A state agency that receives a form which does not appear to follow the format of Exhibit 4.1 should contact the claims division's expenditure research and assistance section at (512) 475-1097.

Cancellation of Deductions

A state employee may cancel a deduction for a payment to a participating credit union at any time. The employee may provide the cancellation only by properly completing a cancellation form and submitting that form to the credit union or the employee's employer.

Effective Date of Authorization Forms

This paragraph applies only if an authorization form is submitted for the purpose of requesting a new deduction to a participating credit union. The deduction must begin not later than with the salary or wages paid on the first workday of the second month following the month in which the employing state agency receives the form.

This paragraph applies only if an authorization form is submitted for the purpose of requesting a change in an existing deduction to a participating credit union. The change must take effect not later than with the salary or wages paid on the first workday of the second month following the month in which the employing state agency receives the form.

This paragraph applies only if an authorization form is submitted for the purpose of canceling an existing deduction to a participating credit union. The cancellation must take effect not later than with the salary or wages paid on the first workday of the second month following the month in which the employing state agency receives the form.

Payments of Deducted Amounts by the Comptroller

If feasible, the Comptroller is required to pay deducted amounts to a participating credit union by electronic funds transfer (EFT). If the Comptroller does this, the Comptroller may:

- Make one transfer to the credit union and require it to distribute the transferred funds to state employees' accounts; or
- Make one transfer to the credit union account of each state employee.

If it is infeasible for the Comptroller to pay deducted amounts to a participating credit union by EFT, then the Comptroller is required to:

- Pay the amounts by warrant; and
- Make the warrant payable to the credit union; and
- Require the credit union to distribute the deducted amounts to state employee's accounts; and
- Make the warrant available for pick-up by the state agency whose employee's deducted amounts are being paid by the warrant

The agency shall hand deliver or use an overnight delivery service to deliver the warrant to the credit union. If the warrant relates to salary or wages paid on the first workday of a month, the agency must either:

- Hand deliver the warrant to the credit union not later than the third workday of the month; or
- Release the warrant to an overnight delivery service not later than the second workday of the month.

If the warrant relates to salary or wages paid on a day that is not the first workday of a month, the agency must either:

- Hand deliver the warrant to the credit union not later than the third workday after the agency receives the warrant; or
- Release the warrant to an overnight delivery service not later than the second workday after the agency receives the warrant.

This paragraph applies only when the Comptroller makes one transfer of deducted amounts to the credit union account of each state employee. The Uniform Statewide Payroll/Personnel System (USPS) provides for direct deposit to only one savings account (deduction 69) and one checking account (deduction 70) per employee. The direct deposit may be made to any type of financial institution, including a credit union. For example, an employee may authorize a direct deposit directly to the employee's savings account at a credit union only if the employee has not already authorized a direct deposit directly to the employee's savings account at another financial institution.

Payments of Deducted Amounts by Institutions of Higher Education

The following applies to state employees employed by an institution of higher education whose salary or wages are not paid directly to them by the Comptroller on the institution's behalf.

If feasible, the institution must pay the employees' deducted amounts to a participating credit union by EFT. If the institution does this, the institution may:

- Make one transfer to the credit union and require it to distribute the transferred funds to the employees' accounts; or
- Make one transfer to the credit union account of each employee.

If it is infeasible for the institution to pay deducted amounts to a participating credit union by EFT, then the institution is required to:

- Pay the amounts by check; and
- Make the check payable to the credit union; and
- Require the credit union to distribute the deducted amounts to state employee's accounts.

The institution shall hand deliver or use an overnight delivery service to deliver the check to the credit union. If the check relates to salary or wages paid on the first workday of a month, the institution must either:

- Hand deliver the check to the credit union not later than the third workday of the month; or
- Release the check to an overnight delivery service not later than the second workday of the month.

If the check relates to salary or wages paid on a day that is not the first workday of a month, the institution must either:

- Hand deliver the warrant to the credit union not later than the third workday after the date printed on the check; or
- Release the check to an overnight delivery service not later than the second workday after the date printed on the check.

Payroll Voucher Instructions

Agencies processing payrolls through the Comptroller must report deductions for credit union payments the same way they report deductions for insurance, savings bonds, deferred compensation, etc. When deductions are made, report the amount under the “Other” column of the Payroll Detail Sheet. The total amount of the deduction on the payroll voucher for each credit union must be reflected in the NET AMOUNT column, on separate deduct lines using the appropriate assigned Texas identification numbers.

Monthly Detail Reports

A state agency shall submit a monthly detail report to each participating credit union that received or should have received payment of the amounts deducted from the salary or wages of at least one of the agency’s employees. If the credit union has notified the Comptroller in writing that the report should be submitted to an entity other than the credit union, then the report must be submitted to that entity.

The Comptroller shall submit monthly detail reports on behalf of a state agency that uses USPS and submits those reports electronically. If a state agency uses USPS but does not submit its monthly detail reports electronically, then the Comptroller shall generate the reports for remote printing at the agency’s location. The agency is then responsible for ensuring that the credit union receives the reports.

A monthly detail report may cover only the deductions from salary or wages that are paid on the first workday of the month. Deducted amounts that were paid by EFT directly to the credit union account of a state employee may not be included in the report.

A monthly detail report to a participating credit union must include:

- The name and social security number of each state employee from whose salary or wages a deduction was made for payment to the credit union for that month; and
- The amount of the deduction for each employee for that month.

A state agency shall submit a monthly detail report by facsimile, by hand delivery, or through an overnight delivery service. An agency that submits the report by facsimile shall ensure that the report is received not later than the third workday of the month. An agency that hand delivers the report shall ensure that the report is received not later than the third workday of the month. An agency that uses an overnight delivery service shall release the report to the service not later than the second workday of the month.

Additional Detail Reports

A state agency shall submit an additional detail report to each participating credit union that received or should have received payment of the amounts deducted from the salary or wages of at least one of the agency's employees. If the credit union has notified the Comptroller in writing that the report should be submitted to an entity other than the credit union, then the report must be submitted to that entity.

The Comptroller shall submit additional detail reports on behalf of a state agency that uses USPS and submits those reports electronically. If a state agency uses USPS but does not submit its additional detail reports electronically, then the Comptroller shall generate the reports for remote printing at the agency's location. The agency is then responsible for ensuring that the credit union receives the reports.

An additional detail report may cover only the deductions from salary or wages that are paid on a day other than the first workday of a month. Deducted amounts that were paid by EFT directly to the credit union account of a state employee may not be included in the report.

An additional detail report to a participating credit union must include:

- The name and social security number of each state employee from whose salary or wages a deduction was made for payment to the credit union for that month; and
- The amount of the deduction for each employee for that month.

A state agency shall submit an additional detail report by facsimile, by hand delivery, or through an overnight delivery service. An agency that submits the report by facsimile shall ensure that the report is received not later than the third workday after the deducted amounts are paid to the credit union. An agency that hand delivers the report shall ensure that the report is received not later than the third workday after the deducted amounts are paid to the credit union. An agency that uses an overnight delivery service shall release the report to the service not later than the second workday after the deducted amounts are paid to the credit union.

This paragraph applies only to an additional detail report that covers deducted amounts which are paid by warrant or check to a participating credit union. The report shall accompany the warrant or check when it is mailed or otherwise delivered to the credit union.

Southwest Corporate Federal Credit Union

Many credit unions are members of Southwest Corporate Federal Credit Union (Southwest Corporate) and use its data processing services for internal processing. Arrangements have been made for state agencies and institutions of higher education to provide one detail report to Southwest Corporate for their members. The list of participating credit unions will indicate whether the credit union is a member and if their report should go to Southwest Corporate.

Canceled Payments of Salary or Wages

A state agency shall notify a participating credit union about the agency's cancellation of a payment of salary or wages to a state employee. The notification must be by facsimile and must be provided not later than the day the agency processes the cancellation. This paragraph applies only if:

- The payment is canceled after the agency has hand delivered to the credit union or released to an overnight delivery service a monthly or an additional detail report; and
- The deductions covered by the report include deductions from the canceled payment of salary or wages.

The credit union may not distribute the deducted amounts to the employee's account if the credit union receives the notice before the distribution occurs.

If the credit union receives the notice after distributing the deducted amounts, the credit union shall withdraw the deducted amounts from the employee's account unless:

- The credit union determines the withdrawal would violate federal or state law; or
- The amount of funds in the account is insufficient for withdrawal of the full amount.

If the withdrawal is not allowed under the preceding criteria, the agency that employs the employee must collect the amount of the distribution directly from the employee.

The credit union shall notify the employing state agency about whether the deducted amounts have been distributed to the employee's account. If the distribution has occurred, the credit union also shall notify the agency about whether the credit union has withdrawn the deducted amounts from the employee's account. These notifications must be done by facsimile.

HRIS Reporting Instructions

An institution of higher education or other locally funded agency is required to report this deduction to the human resource information system.

Agencies must use the *CUP* (credit union payment) and *CUF* (credit union fee) codes on the *Payment Deduction Information Record* (record ID 87) to report the actual deduction and fee, if charged.

The Texas identification number for the credit union is reported in the *Vendor Identification* data field and the fee amount is reported in the *Fee Data* field.

Administrative Fee

The state may withhold from an employee's salary or wage payment an administrative fee for making this deduction. The Comptroller, however, has determined that the incremental cost of the deduction is insignificant and that the cost to withhold the fee could be more than the fee itself. Therefore, the Comptroller has decided not to withhold the fee from payrolls processed through the Comptroller.

This decision does not affect the payroll system of an institution of higher education that is reimbursable from the state treasury. The system may withhold from a salary or wage payment an administrative fee for making this deduction. The amount of the fee may not exceed the lesser of: (1) the actual administrative cost of making the deduction; or (2) the highest fee charged by the institution for making another similar deduction.

Exhibit 4.1: Credit Union Deduction Authorization Form

_____ _____ () _____ P.I.N. No. _____ Routing Transit No. _____			
SECTION A: AGENCY USE ONLY			
Agency Name	Agency #	Unit #	First Active Duty Date
SECTION B: EMPLOYEE INFORMATION			
Social Security #	Employee Name (Last, First, Middle)		
Mailing Address		City	State ZIP
Home Phone ()		Work Phone ()	
Agency/University		Facility/Location	
Member Account #			
SECTION C: AUTHORIZATION FOR SET UP, CHANGES OR CANCELLATION			
Credit Union Monthly Deduction: <input type="checkbox"/> Start Deduction <input type="checkbox"/> Stop Deduction <input type="checkbox"/> Change Amount of Deduction			
Effective Date: _____ Amount of Deduction \$ _____ Amount of Fee \$ _____			
Share or Deposit Account #: _____			
I authorize the monthly deduction from my salary or wages for a credit union payment and associated fee as indicated above. I understand that this deduction is for deposit to a share or deposit account and does not authorize a loan payment. I understand that I may revoke this authorization at any time by written notice. I recognize that if I fail to provide complete and accurate information on this form or to the credit union designated by this form, that my payments may be erroneously transferred electronically. I understand that the credit union may withdraw funds from the designated account if they were deposited in error, subject to federal and state law. I agree to comply with the rules adopted by the Comptroller concerning deductions for credit union payments.			
_____ Employee Signature		_____ Date	
(Credit Union Use Only)			
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
SECTION D: CREDIT UNION			
The employee designated by this form has a share or deposit account at the above named credit union. The credit union assumes responsibility for depositing the amount received from the Comptroller of Public Accounts or state agency named above to the account designated by the employee at the above named credit union.			
Credit Union Representative Name	Representative Signature	Date	
White - Credit Union Copy Yellow - Member Copy Pink - State Copy (PD-1-TX-4/95)			

Deferred Compensation (Section 403(b) Plans)

Applies to:

- (1) The Texas Higher Education Coordinating Board; and
- (2) The Texas Education Agency; and
- (3) The Texas School for the Deaf; and
- (4) The Texas School for the Blind and Visually Impaired; and
- (5) The Texas Department of Mental Health and Mental Retardation and the facilities and institutions under its jurisdiction; and
- (6) The Texas Department of Health and the facilities and institutions under its jurisdiction; and
- (7) The Texas Youth Commission and the facilities and institutions under its jurisdiction; and
- (8) Each state-supported institution of higher education.

Sources:

Tex. Rev. Civ. Stat. Ann. art. 6228a-5, §§ 1, 2(b) (Vernon Supp. 2000).

Discussion:

A state agency listed above may contract with its employees for the purchase of annuities or for contributions to any investment authorized under Section 403(b) of the Internal Revenue Code of 1954 as it existed on January 1, 1981. If an employee wants to participate, either the Comptroller or the employee's employer may reduce the employee's salary by the amount the employee wants to contribute.

Deferred Compensation (Section 457 Plan, Other Than a Section 457(f) Program)

Applies to:

Each state agency or institution of higher education.

Sources:

I.R.C. § 457(a)-(e), (g); TEX. GOV'T CODE ANN. § 609.001(1)-(2), (8), (11) (Vernon 1994), §§ 609.007(b)-(c), 609.502(b)-(c) (Vernon Supp. 2000); 34 TEX. ADMIN. CODE § 87.5(a) (1999).

Discussion:

The board of trustees of the Employees Retirement System of Texas (ERS) is the trustee and plan administrator of an employees' deferred compensation plan, the federal income tax treatment of which is governed by Section 457 of the Internal Revenue Code of 1986 ("457 plan").

The board of trustees may contract with an employee of a state agency that participates in the 457 plan for deferment of any part of the employee's compensation. The contract must provide for the employee's consent to an automatic payroll deduction in an amount equal to the deferred amount. The deferrals and any investment income earned on those deferrals are not subject to federal income taxation until they are paid or otherwise made available to the employee.

Any questions about the 457 plan should be directed to ERS.

For the purpose of this deduction:

- **Employee** means an individual who is an officer or employee of a state agency.
- **Institution of higher education** has the meaning assigned by TEX. EDUC. CODE ANN. § 61.003 (Vernon Supp. 2000), except the term does not include a public junior college.
- **State agency** means a board, commission, office, department, or other agency in the executive, judicial, or legislative branch of state government, including an institution of higher education.

Deferred Compensation (Section 457(f) Program)

Applies to:

Each state agency or institution of higher education.

Sources:

I.R.C. § 457(f); Tex. Rev. Civ. Stat. Ann. art. 6228a-5, § 3 (Vernon Supp. 2000).

Discussion:

A state agency may permit some or all of its employees to participate in an agency-sponsored program described by Section 457(f) of the Internal Revenue Code of 1986. The agency may sponsor the program only after the agency has submitted a program proposal to the Employees Retirement System of Texas (ERS) for its review and comment. Contributions to this program probably may be made only through payroll deduction.

For the purpose of this deduction, **state agency** means a board, office, commission, department, institution, court, or other agency in any branch of state government.

Employee Organizations, Payment of Membership Fees to

Applies to:

Each state agency or institution of higher education.

Sources:

TEX. GOV'T CODE ANN. § 403.0165(a), (l)(2) (Vernon 1998); 34 TEX. ADMIN. CODE § 5.46(a)(2), (7), (9), (12)-(15), (b)(1)(A), (C), (b)(8)(A)-(B), (c)(1)(A)(i), (B)(i), (e)(1)(A), (C), (e)(2)(A), (i)(4), (k)(5)(B), (6)(B), (7), (l)(3) (1999) (administrative rule governing deductions for paying membership fees to employee organizations, reprinted in Appendix A).

Discussion:

For the purpose of this deduction, several important terms are specifically defined by law or administrative rule.

Definitions

- **Eligible organization** means a state employee organization that the Comptroller has certified in accordance with the Comptroller's administrative rule governing this deduction.
- **Institution of higher education** has the meaning assigned by TEX. EDUC. CODE ANN. § 61.003 (Vernon Supp. 2000).

- **Membership fee** means the dues or fee that a state employee organization requires a state employee to pay to maintain membership in the organization.
- **Salary or wages** means base salary or wages, longevity pay, or hazardous duty pay.
- “State agency” means a department, commission, board, office, or any other entity of Texas state government, including an institution of higher education.
- **State employee** means an employee of a Texas state agency. The term includes an elected or appointed official, a part-time employee, an hourly employee, a temporary employee, an employee who is not covered by the Position Classification Act, and a combination of the preceding. The term excludes an independent contractor and the employee of an independent contractor.
- **State employee organization** means an association, union, or other organization that advocates the interests of state employees concerning grievances, compensation, hours of work, or other conditions or benefits of employment.

<p>Note: <u>See</u> Section 5.46 in Appendix A for specific requirements. <u>See also</u> Appendix C for a list of approved organizations, their Texas identification numbers, and their mailing addresses.</p>

Authorizations of Deductions

A state employee may authorize one or more monthly deductions from the employee’s salary or wages to pay membership fees to eligible organizations. The employee may provide the authorization only by properly completing an authorization form and submitting the form to the eligible organization that will be receiving the employee’s membership fees.

Authorization Forms

An eligible organization must provide an authorization form to a state employee or a state agency promptly after receiving an oral or written request for the form. The form, however, may not be distributed before the organization has received the Comptroller’s written approval of the form. The form must display the name of the organization and its Texas identification number at the top and must be produced on paper at least 8.5 inches wide and 11 inches long.

Cancellation of Deductions

A state employee may cancel a deduction to pay membership fees to an employee organization at any time. The employee may provide the cancellation by properly completing a cancellation form and submitting that form to the organization or the employee's employer. Alternatively, the employee may provide other written notice of the cancellation to the organization or the employee's employer.

Cancellation Forms

An eligible organization must provide a cancellation form to a state employee or a state agency promptly after receiving an oral or written request for the form. The form, however, may not be distributed before the organization has received the Comptroller's written approval of the form. The form must display the name of the organization and its Texas identification number at the top and must be produced on paper at least 8.5 inches wide and 11 inches long.

Effective Date of Authorization Forms and Cancellation Forms and Notices

An eligible organization must make a reasonable effort to ensure that the appropriate state agency receives the original of a state employee's authorization form within a reasonable time after the organization receives the form. If the agency receives the form on the first calendar day of a month, then the deduction begins with the salary or wages paid on the first workday of the first month following the month in which the agency receives the form. If the form is received after the first calendar day of a month, then the deduction begins not later than with the salary or wages paid on the first workday of the second month following the month in which the agency receives the form.

An eligible organization must make a reasonable effort to ensure that the appropriate state agency receives the original of a state employee's cancellation form or cancellation notice within a reasonable time after the organization receives the form or notice. If the agency receives the form or notice on the first calendar day of a month, then the cancellation is effective with the salary or wages paid on the first workday of the first month following the month in which the agency receives the form or notice. If the form or notice is received after the first calendar day of a month, then the cancellation is effective not later than with the salary or wages paid on the first workday of the second month following the month in which the agency receives the form or notice.

If a state employee submits a cancellation form or other written notification of cancellation to the employee's employer, then the agency must include a copy of this form or notice with the next detail report that the agency sends to the affected eligible organization.

Payroll Detail Sheets

Agencies must report these deductions in the OTHER column of the Payroll Detail Sheet. The total deduction for each employee organization on the voucher must be listed in the NET AMOUNT column on separate deduct lines using the appropriate Texas identification numbers (TIN). One TIN has been established for each eligible employee organization. The TIN will generate a direct deposit transaction.

Detail Reports to Eligible Organizations

The following information applies only to a state agency that employs at least one state employee from whose salary or wages a deduction is made to pay a membership fee to an eligible organization.

A state agency must submit a detail report each month to each eligible organization that receives amounts deducted from the salary or wages of the agency's employees. The agency must mail the report not later than the 20th calendar day of the month. If the 20th calendar day is not a workday, then the first workday after the 20th calendar day is the mailing deadline.

A detail report must include the name (in alphabetical order) and social security number of each employee from whose salary or wages a deduction was authorized, regardless of whether the deduction actually occurred. The report also must list the amount of the deduction actually made for the employee. This report is generated automatically for agencies that use the Uniform Statewide Payroll/Personnel System.

An eligible organization must reconcile the detail report provided by a state agency with the amount of membership fees actually received from the agency's employees through payroll deduction. The organization must ensure that the agency receives the organization's report of any discrepancies not later than the 60th calendar day after the day on which the agency mailed the report to the organization. If the 60th calendar day is not a workday, then the first workday following the 60th calendar day is the deadline. Upon receiving a discrepancy report, the agency shall investigate the discrepancy and notify the organization of the action to be taken to eliminate it.

The Texas State Employees Union (TSEU) has requested that each detail report be submitted on a 5.25 inch floppy diskette. If that is not feasible, magnetic tape or cartridge is TSEU's second preference. If the report cannot be produced on magnetic media, TSEU is willing to accept a hard copy.

The specifications for magnetic media are:

- 1/4-inch diskette
 - ASCII with fixed fields and record lengths
- Magnetic tape or cartridge
 - 1/2-inch nine track tape
1600 BPI. Block size greater than 6K and less than 14K
ASCII or EBCDIC. No packed fields. Fixed fields and record lengths.

The Texas Public Employees Association and the American Federation of State, County and Municipal Employees have requested that the detail report be submitted only in hard copy form.

Excessive Deductions

The following applies if a state agency erroneously deducts from a state employee's salary or wages more than the amount authorized by the employee.

The overage may be recovered by offsetting the amount of the overage from a subsequent payment of deducted amounts to the organization. The agency may obtain a refund of the overage from the organization only if no subsequent payments of deducted amounts are anticipated to be made to the organization.

When the overage is offset from a subsequent payment, the offset must be reflected as a separate amount from the regular deduction on the detail report. For example, an employee authorized an \$8 deduction. In January, the agency deducts \$10. In February, the agency deducts a net of \$6 to make up for the overage taken in January. On the February report, the agency should show an \$8 deduction with a (\$2) deduction on separate lines.

Excess Payment of Compensation, Recouping

Applies to:

Each state agency or institution of higher education.

Sources:

TEX. GOV'T CODE ANN. §§ 666.001(1), (3)-(5), 666.002-666.003, 666.005, 666.007 (Vernon Supp. 2000), as added by Act of May 31, 1999, 76th Leg., R.S., ch. 1467, § 1.27, 1999 Tex. Gen. Laws 4996, 5009-10.

Discussion:

For the purposes of this deduction, the following terms are specifically defined by law.

Definitions

- **Compensation** specifically includes items like:

- base salary or wages; and
- longevity or hazardous duty pay; and
- benefit replacement pay; and
- a lump sum payment for the balance of accrued vacation or sick leave, or both; and
- an emolument provided in lieu of base salary or wages.

The Comptroller believes that “compensation” impliedly includes all types of bonuses and performance rewards. The Comptroller also believes that workers’ compensation payments do not constitute “compensation” for the purposes of this deduction.

- **State agency** means a board, commission, council, committee, department, office, agency, or other governmental entity in the executive, legislative, or judicial branch of state government. The term specifically includes:
 - An institution of higher education as defined by TEX. EDUC. CODE ANN. § 61.003 (Vernon Supp. 2000), other than a public junior or community college; and
 - The Texas Guaranteed Student Loan Corporation.
- **State employee** means an officer or employee of a state agency.
- **Successor** means:
 - The estate of a deceased state employee; or
 - The surviving spouse of a deceased state employee; or
 - The distributees of the estate of a deceased state employee.

Deduction Authorization

The amount of an overpayment of compensation to a state employee may be recouped by deducting that amount from future payments of compensation to the employee or the employee's successor.

Which State Agencies May Make the Deduction

Only the Comptroller may make this deduction if the Comptroller is responsible for paying compensation to the employee or successor on behalf of a state agency. Example: the Uniform Statewide Accounting System is used to pay compensation to a state employee out of money deposited in the state treasury.

Otherwise, only the state agency that pays compensation to the employee or successor may make this deduction. Example: a state agency issues a check to pay compensation to a state employee out of a local bank account.

Discretionary Nature of the Deduction

This deduction is entirely discretionary. A state agency is not required to make the deduction under any circumstances, although the agency may have a legal obligation to seek the refund of an overpayment of compensation through other means.

A state employee or the employee's successor retains the option to refund a state agency's overpayment of compensation by cash, check, or another valid payment method in lieu of the deduction.

A state agency may enter into an agreement with a state employee or the employee's successor for an overpayment of compensation to be refunded by the employee or successor through installments. The installments may be paid through this type of deduction or by cash, check, or another valid payment method.

General Preconditions for the Comptroller Making the Deduction

The Comptroller may make this deduction on behalf of a state agency only if:

- The agency provides proper notice to the employee or successor; and
- The agency properly requests the Comptroller to make the deduction; and

- Before the agency makes the request, the agency provides the employee or successor the opportunity to exercise any due process or other constitutional or statutory protection that must be accommodated before a collection action may begin; and
- The agency determines that the deduction would not violate any applicable law or rule of this state or the United States.

The Comptroller is prohibited from investigating whether a state agency provided a state employee or the employee's successor the opportunity to exercise due process or other constitutional or statutory protections before the agency requested the Comptroller to make the deduction. Therefore, if the Comptroller receives an inquiry from the employee or the successor about this subject, the Comptroller immediately will refer the employee or successor to the agency.

As authorized by law, the Comptroller intends to rely on a state agency's determination that the deduction would not violate any applicable law or rule.

General Preconditions for a State Agency Making the Deduction

A state agency may make this deduction only if:

- The agency provides proper notice to the employee or successor; and
- Before the agency makes the deduction, the agency provides the employee or successor the opportunity to exercise any due process or other constitutional or statutory protection that must be accommodated before a collection action may begin; and
- The agency determines that the deduction would not violate any applicable law or rule of this state or the United States.

Requesting the Comptroller to Make the Deduction

A state agency's request for the Comptroller to make this deduction must comply with the requirements of the Uniform Statewide Payroll/Personnel System (USPS), if the agency uses USPS. The request is invalid if it does not comply.

A state agency's request for the Comptroller to make the deduction is valid only if submitted in the FACTS format, if the agency does not use USPS.

Certifications Made to the Comptroller

A state agency's request to the Comptroller to make this deduction will constitute the agency's certification to the Comptroller that:

- The agency already has provided proper notice to the employee or successor; and
- The agency already has provided the employee or successor the opportunity to exercise any due process or other constitutional or statutory protection that must be accommodated before a collection action may begin; and
- The agency already has determined that the deduction would not violate any applicable law or rule of this state or the United States.

The only way a state agency may avoid making this certification is to refrain from requesting the Comptroller to make the deduction.

Notice to a State Employee or Successor

Notice provided by a state agency to a state employee or the employee's successor is "proper" for the purposes of this deduction only if the notice:

- Is given in a manner reasonably calculated to give actual notice to the employee or successor; and
- States the amount of the overpayment of compensation and the name of the indebted employee; and
- Specifies the date by which the overpayment of compensation must be refunded; and
- Informs the employee or successor that unless the overpayment of compensation is refunded on or before the date specified, the amount of the overpayment may be deducted from any amount of compensation the agency owes the employee or successor.

Calculating the Hourly Rate for This Deduction

This paragraph applies only if an overpayment of compensation resulted from a state agency's belief at the time of the overpayment that a state employee worked more hours than the employee actually worked. The agency shall calculate the amount of this deduction by using the hourly rate of pay that was in effect during the payroll period the hours were worked. This is because the hourly rate will vary from payroll period to payroll period depending on the number of working hours in each period.

Effect of This Deduction on Gross Compensation and Other Types of Deductions

This deduction is not a “docking” of or reduction in the gross compensation paid to a state employee for services provided during the payroll period for which the deduction is made. For example, a state agency that overpays compensation to a state employee for services provided during September 2000 may deduct the amount of the overpayment from the compensation paid to the employee for services provided during October 2000. The agency may not reduce the gross compensation of the employee for services provided during October. The overpayment may be recouped only as a deduction, unless the overpayment is being refunded directly by cash, check, or another valid payment method.

If a deduction was made from an overpayment of compensation at the time the overpayment occurred, then an adjustment of that deduction must be made in conjunction with the recoupment of that overpayment. For example, the amount of federal income taxes and retirement contributions deducted from an overpayment of compensation would have to be adjusted when the overpayment is recouped.

Timing of Deduction

This deduction may be made from any payment of compensation. Examples of a compensation payment include a one-time merit payment, a lump sum payment of vacation leave, and an information technology bonus.

This deduction may be made more often than once monthly. For example, the deduction could be made from each payment of compensation to a state employee who is paid twice monthly or every other week.

Sufficiency of Salary or Wages to Support the Deduction

If the amount of a state employee's compensation is insufficient to support this deduction after all other deductions with a higher priority have been taken, then a portion of this deduction must be taken. This deduction is not an "all-or-nothing" deduction. The amount of the deduction that could not be taken must be deducted in the succeeding payroll periods until the full amount is deducted.

The following applies to a state employee who has agreed to refund an overpayment of compensation through deduction but under an installment plan. The amount that could not be deducted in a payroll period because of insufficient compensation must be added to the amount of the regularly-scheduled installment in the next payroll period. The regularly-scheduled installment in the next payroll period is not automatically postponed to the succeeding payroll period.

Documenting the Deduction

A state agency that makes this deduction must retain certain supporting documentation about the deduction in its files. The documentation must state:

- The amount of the deduction made during each payroll period; and
- The total amount of overpaid compensation that is being recouped by deduction, if the compensation is being recouped through installments; and
- The type of compensation that is being recouped through the deduction; and
- The payroll periods for which the deduction is made; and
- The number of working hours for which the state employee was overpaid, if an incorrect number of working hours caused the overpayment.

The payroll detail that a state agency submits with a payroll voucher to the Comptroller must include this deduction and must specify the amount of the deduction for each employee and successor.

The Comptroller may require the agency to make supporting documentation about this deduction available to the Comptroller during a post-payment audit, a pre-payment audit, or at any other time.

Reporting to the Human Resource Information System

A state agency that does not use USPS must report this deduction to the human resource information system.

Accounting Requirements

The following applies only to a state agency that:

- Directly used money in the state treasury to make an overpayment of compensation; or
- Initially used local money controlled by the agency to make an overpayment of compensation and then was reimbursed for that overpayment with money in the state treasury.

A state agency that recoups an overpayment through this deduction must reimburse the appropriate account or fund in the state treasury. The agency must credit that reimbursement to the Comptroller object code that corresponds to the type of compensation recouped, e.g., salary, benefit replacement pay, longevity pay. The reimbursement must be credited to the same fiscal year that was charged for the overpayment. If the fiscal year already has closed, the agency must first deposit the reimbursement in a suspense account and then manually adjust the appropriate accounts.

For this purpose, **state treasury** means money (other than local funds) that may be spent only on a warrant issued or electronic funds transfer initiated by the Comptroller.

Adjustments to Payroll Accumulators

A state agency that makes this deduction must adjust all relevant payroll accumulators, such as agency-paid taxes, employee-paid taxes, and limits on benefit replacement pay and deferred compensation. The agency must maintain sufficient records about these adjustments to prove compliance with state and federal laws and to support an audit.

Overpayments for Optional Holidays

The following applies only to a state employee who takes a paid day off from work on an optional holiday and who subsequently becomes ineligible for a paid day off on the state holiday that the employee had agreed to exchange for the optional holiday. The employee has received an overpayment of compensation for the purpose of this deduction.

Terminations or Interagency Transfers of State Employees

If a state employee terminates employment with a state agency before the agency has fully recouped an overpayment of compensation to the employee, then the agency may deduct the outstanding amount of the overpayment from any lump sum payment of accrued vacation or sick leave by the agency to the employee or the employee's successor.

If this deduction started while a state employee was employed by a state agency, the deduction may not continue after the employee transfers to a different state agency. The amount of overpaid compensation that remains outstanding after the transfer may not be recouped through this type of deduction. The agency that overpaid the compensation should consider starting a new collection action or procedure to recoup the remaining amount by alternative means.

Legal Advice

A state agency should consult internal legal counsel, the attorney general, or other appropriate legal counsel if the agency needs legal advice about:

- Notice requirements; or
- Due process or other constitutional or statutory protections that must be accommodated before a collection action may begin; or
- Whether this deduction would violate any applicable law or rule of this state or the United States.

Extra Federal Income Tax Withholding

Applies to:

Each state agency or institution of higher education.

Sources:

I.R.C. § 3402(i)(1); Treas. Reg. § 31.3402(i)-2(a)(1) (1983);
TEX. GOV'T CODE ANN. § 659.002(d) (Vernon Supp. 2000).

Discussion:

A state agency or an institution of higher education must honor an employee's request to withhold more federal income tax than would otherwise be withheld under a given combination of income and exemptions. The extra withholding is a sum-certain amount, i.e., it is not an extra exemption. The request must be made on a Form W-4.

Federal Income Tax Withholding from Payments that are not “Wages”

Applies to:

Each state agency or institution of higher education.

Sources:

I.R.C. § 3402(p)(3); Treas. Reg. § 31.3401(a)-3 (1971).

Discussion:

The secretary of the treasury is authorized to provide by regulation for federal income tax withholding from any type of payment to an employee with respect to which the secretary finds that withholding would be appropriate, if the employee and the employee's employer agree to the withholding. This applies only to a payment that is not “wages” under the federal income tax withholding statutes.

The regulation adopted by the secretary of the treasury says that remuneration for services performed by an employee for an employer may be the subject of a voluntary withholding agreement if:

- The remuneration does not constitute “wages” under the federal income tax withholding statutes; and
- The regulation does not specifically disqualify the remuneration from such an agreement.

Specifically disqualified are:

- Remuneration for services performed by a permanent resident of the Virgin Islands; and
- Fees paid to a public official; and
- Remuneration for services for a foreign government or an international organization; and
- Remuneration for services performed in a possession of the United States by a citizen of the United States; and
- Remuneration for services performed in Puerto Rico by a citizen of the United States; and
- Remuneration other than in cash for service not in the course of the employer's trade or business; and
- Payments from or to certain tax-exempt trusts; and
- Payments under or to certain annuity plans or bond purchase plans; and
- Group-term life insurance; and
- Moving expenses; and
- Tips paid in any medium other than cash.

Federal Income Tax Withholding from “Wages”

Applies to:

Each state agency or institution of higher education.

Sources:

I.R.C. §§ 3401(a), 3402(a)(1); TEX. GOV'T CODE ANN. § 659.002(d) (Vernon Supp. 2000).

Discussion:

A state agency or institution of higher education must deduct federal income tax from the “wages” of a state officer or employee in accordance with the tables or computational procedures prescribed by the secretary of the treasury.

For the purpose of this deduction, **wages** means “all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration (including benefits) paid in any medium other than cash....” There are many exceptions to this definition that are beyond the scope of this guide.

Federal Insurance Contributions Act Withholding (for Social Security and Medicare)

Applies to:

Each state agency or institution of higher education.

Sources:

I.R.C. §§ 3101(a), (b)(6), 3102(a), 3121(a); 42 U.S.C.A. § 430 (West Supp. 1999); Treas. Reg. § 31.3102-1(a) (1969); Cost-of-Living and Other Determinations for the Year 2000, 64 Fed. Reg. 57,508 (1999); TEX. GOV'T CODE ANN. § 606.003 (Vernon 1994), §§ 606.063-606.064, 606.066-606.069 (Vernon 1994 & Supp. 2000), § 659.002(d) (Vernon Supp. 2000).

Discussion:

The Federal Insurance Contributions Act (FICA) requires a state agency or an institution of higher education to deduct employment taxes from the wages of a state officer or employee. The withholding rate for calendar year 2000 is 6.20% of the first \$76,200 in wages for old age, survivors, and disability insurance (popularly known as social security). The withholding rate for calendar year 2000 is 1.45% of wages for hospital insurance (popularly known as Medicare). Except for the \$76,200 limit, these rates will remain in effect for all subsequent years unless changed by congress.

The Texas legislature has enacted legislation through which the state agreed to include its officers and employees in the federal social security system. That legislation requires each state agency or institution of higher education to comply with FICA's deduction requirements.

For the purpose of this deduction, **wages** means "all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash." There are many exceptions to this definition that are beyond the scope of this guide.

Goods and Services Provided to Employees

Applies to:

- A. Texas Department of Criminal Justice (TDCJ).
- B. Texas Youth Commission (TYC).
- C. Department on Aging,¹⁰ the Texas Commission on Alcohol and Drug Abuse, the Texas Commission for the Blind, the Texas Cancer Council, the Children's Trust Fund of Texas Council, the Texas Commission for the Deaf and Hard of Hearing, the Interagency Council on Early Childhood Intervention, the Texas Department of Health, the Health and Human Services Commission, the Texas Department of Human Services, the Texas Department of Mental Health and Mental Retardation, the Department of Protective and Regulatory Services, and the Texas Rehabilitation Commission.

Sources:

- A. Riders 12, 14, 16(a)-(b), and 17 in the appropriations to the Department of Criminal Justice in the General Appropriations Act (GAA).
- B. Rider 10(a) in the appropriations to the Youth Commission in the GAA.
- C. Article II, Section 2(3) of the GAA (special provisions relating to all health and human services agencies).

Discussion:

- A. TDCJ may provide certain goods and services to its employees. Certain employees of TDCJ may live in state-owned housing on a rental basis. TDCJ may provide meals to certain employees if TDCJ charges more than \$1 per meal. TDCJ may launder or dry clean the clothing of its employees, or provide other services to its employees, if TDCJ charges fees to recover the cost of providing the services.
TDCJ must deduct from the salaries and wages of its officers and employees, whenever practical, the fees it charges for providing housing, meals, laundry, dry cleaning, and other services.
- B. TYC must collect the cost of any services rendered to a TYC employee through either a payroll deduction or an advance cash payment.
- C. A health and human services agency listed above may deduct from the salaries and wages of its employees the cost of services rendered to them.

¹⁰Effective September 1, 2003, the name of this agency is changed to the Texas Department of Aging and Disability Services. Act of May 28, 1999, 76th Leg., R.S., ch. 1506, §§ 2.02, 2.12, 1999 Tex. Gen. Laws 5193, 5208, 5211.

Group Insurance Plans (Other than Cafeteria Plans)

Applies to:

- A. Each employee covered by the Texas State Employees Uniform Group Insurance Benefits Act.
- B. Each employee of The University of Texas System or The Texas A&M University System.

Sources:

- A. Texas State Employees Uniform Group Insurance Benefits Act, Tex. Ins. Code Ann. art. 3.50-2, §§ 3(a)(11), 5(a), 13B, 14(a), (d)-(f), 15 (Vernon Supp. 2000); 24 Tex. Reg. 4943-4, 4971 (1999), adopted 24 Tex. Reg. 7276 (1999) (to be codified as an amendment to 34 TEX. ADMIN. CODE § 81.7(a)(4), (f)(1)).
- B. Texas State College and University Employees Uniform Insurance Benefits Act, Tex. Ins. Code Ann. art. 3.50-3, §§ 3(a)(7), 4(a), 12(a)-(b), 17(a) (Vernon Supp. 2000).

Discussion:

- A. The board of trustees of the Employees Retirement System of Texas (ERS) is required to establish and administer the Texas Employees Uniform Group Insurance Benefits Program for active and retired employees. The state contributes to the cost of the group insurance program for each employee. This contribution is insufficient to cover the entire cost of the program for some employees, particularly if an employee includes his or her spouse and children in the program. When the state's contribution for an employee is insufficient, the employee must pay the balance through payroll deduction.

In connection with its administration of the group insurance program, the board of trustees of ERS administers a premium conversion plan that is mandatory for each employee who participates in the group insurance program. The plan provides for employees to pay insurance premium expenses with pre-tax dollars.

For the purpose of this deduction, **employee** has the meaning assigned by Tex. Ins. Code Ann. art. 3.50-2, § 3(a)(5) (Vernon Supp. 2000).
- B. The University of Texas System and The Texas A&M University System are required to implement the Texas State College and University Employees Uniform Insurance Benefits Program for the benefit of their employees. Each system must contribute to the cost of the group insurance program for each employee. This contribution may be insufficient to cover the entire cost of the program for some employees. When a system's contribution for an employee is insufficient, the employee must pay the balance through payroll deduction.

For the purpose of this deduction, **employee** has the meaning assigned by Tex. Ins. Code Ann. art. 3.50-3, § 3(a)(4) (Vernon Supp. 2000).

Levies from the Internal Revenue Service

Applies to:

Each state agency or institution of higher education.

Sources:

I.R.C. §§ 6331(a), 6332(a), 6334(d); Treas. Reg. § 301.6331-1(a)(4)(ii); TEX. GOV'T CODE ANN. § 659.002(d) (Vernon Supp. 2000); 34 TEX. ADMIN. CODE § 5.45 (1999).

Discussion:

The Internal Revenue Service (IRS) may levy on the salary or wages of a state officer or employee who refuses or neglects to pay federal taxes within ten days after notice and demand for payment. The IRS levies on salary or wages by serving a notice of levy on the employing state agency or institution of higher education. Upon receipt of the levy, the agency or institution must surrender the salary or wages to the IRS to the extent they exceed the exempt amount. A levy continues in effect until released by the IRS.

Notice of levies must be served on the employing agency or institution, i.e., the Comptroller will accept IRS levies only for Comptroller employees.

An IRS levy is treated as a payroll deduction. The payee number for the deduction consists of the employee's Texas identification number and a new mail code to represent the appropriate payee. The name should be listed as: Internal Revenue Service for John Doe (employee name).

Life Insurance Premiums, Permanent

Applies to:

Each state agency or institution of higher education.

Sources:

TEX. GOV'T CODE ANN. §§ 659.101-659.102, 659.106-659.107
(Vernon Supp. 2000).

Discussion:

To promote the interests of the state and state agency employees, the Employees Retirement System of Texas (ERS) is required to designate supplemental optional benefits programs. Permanent life insurance, catastrophic illness insurance, disability insurance, and prepaid legal services are among the programs eligible for designation. So far, ERS has designated only permanent life insurance. ERS has selected the Metropolitan Life Insurance Company to implement that program.

An employee of a state agency may authorize in writing a deduction each pay period from the employee's salary or wage payment for coverage of the employee under an eligible supplemental optional benefits program. The authorization is voluntary and may be changed or revoked at any time if notice of the change or revocation is given properly.

For the purpose of this deduction, **state agency** means a department, commission, board, office, or other agency of any branch of state government, including an institution of higher education as defined by TEX. EDUC. CODE ANN. § 61.003 (Vernon Supp. 2000).

Loan Repayment (Section 401(k) Deferred Compensation Plan)

Applies to:

Each state agency or institution of higher education.

Source:

I.R.C. §§ 72(p), 401(a)(13)(A).

Discussion:

The Employees Retirement System of Texas (ERS) says that a participant in the state's 401(k) deferred compensation plan, TexaSaver, may receive a loan from the plan under certain circumstances and if certain procedures are followed. The participant must repay the loan through payroll deduction.

Local Income Tax Withholding

Applies to:

Each state agency or institution of higher education.

Source:

State law and local ordinances.

Discussion:

A state employee who lives or works outside Texas may be subject to local income tax withholding under the laws of the state or the ordinances of the municipality in which the employee lives or works. See the applicable tax laws and ordinances for each municipality.

Prepaid Higher Education Tuition Program

Applies to:

Each state agency or institution of higher education.

Sources:

TEX. EDUC. CODE ANN. §§ 54.601(1), (6), (12), 54.626(c) (Vernon Supp. 2000); 34 TEX. ADMIN. CODE § 7.82(b) (1999).

Discussion:

An employee of the state may make payments under a prepaid tuition contract by payroll deduction. The deduction may be terminated at any time.

For the purpose of this deduction:

- **Beneficiary** means a person who is entitled to receive benefits under a prepaid tuition contract.
- **Prepaid tuition contract** means a contract entered into under Subchapter F of Chapter 54, Education Code, between the Prepaid Higher Education Tuition Board and a purchaser to provide for the payment of higher education tuition and required fees of a beneficiary.
- **Purchaser** means a person who is obligated to make payments under a prepaid tuition contract.

This deduction is a voluntary post-tax deduction available to employees of state agencies and institutions of higher education through the prepaid higher education tuition program. This deduction is the sum of the separate contract amounts designated by the employee paid to the program. A ten character (numeric) account number is assigned which identifies the prepaid tuition contract account defined by the Prepaid Higher Education Tuition Board.

Authorization of Deductions

The deduction may cover an unlimited number of separate contract accounts established by the employee for different or same beneficiaries within the established rules of the prepaid higher education tuition program. The deduction will be for the total of the payments for all contract accounts authorized by the employee.

A state employee who wishes to authorize payroll deduction must submit the payroll deduction authorization form to the agency payroll office. The payroll deduction authorization form containing the monthly deduction amount and the account number will serve as authorization for the payroll officer to deduct the specified amount. If an employee wishes to authorize payroll deduction of more than one contract account, separate documentation (payroll deduction authorization forms and participation/payment schedules) must be provided for each contract account to be included in the deduction.

A state employee may authorize a change in the amount to be deducted from the employee's salary or wages by providing the agency payroll office a revised payroll deduction authorization form which stipulates the changed amounts.

In those instances where the monthly deduction amount changes but the account number does not change, it is the employee's responsibility to notify the agency payroll office of the change.

Neither the Comptroller nor a state agency is liable or responsible for any damages or other consequences resulting from a state employee authorizing an incorrect amount of a prepaid tuition deduction.

Determination of participation in the prepaid higher education tuition program is performed by the staff of Prepaid Higher Education Tuition Board. If an employee provides the payroll deduction authorization form from the coupon book, the agency payroll officer can be assured that the payroll deduction is authorized.

Sufficiency of Salary or Wages to Support a Deduction

A state employee is solely responsible for ensuring that the employee's salary or wages are sufficient to support a deduction for prepaid tuition contract(s).

If a state employee's salary or wages are insufficient to support the total of the prepaid tuition contract accounts designated for deduction, then no part of the deduction may be made from the payment being processed.

The amount that could not be deducted from an employee's salary or wages because salary or wages were insufficient to support the deduction may not be made up by deducting the amount from subsequent payments of salary or wages to the employee.

There is no requirement to cancel the deduction because the payment would not support the deduction. If payroll deduction cannot be made, the employee is required to make those payments by personal payment using the monthly payment coupon.

Timing of Deductions

A deduction must be made from the salary or wages that are paid on the first workday of a month.

If a state employee does not receive a payment of salary or wages on the first workday of a month, then the employer of the employee may designate the payment of salary or wages to the employee from which a deduction will be made. If the deduction is made on a payment processed on a supplemental payroll, the employer must ensure that the warrant or check and detail report are received by the Comptroller's treasury operations division on or before the 14th of the month or the following workday if the 14th is not a workday.

A deduction may be made only once each month but must be made on a payment which will ensure that the payment and the payment details are collectively sent to the Comptroller's treasury operations division on or before the 14th of the month. *Employees may risk penalties for late payments if the payments and the report are not received by the treasury operations division by the deadline.*

Cancellation of Deductions

A state employee may cancel a payroll deduction at any time by written authorization to the agency payroll office.

A state employee who wishes to cancel a payroll deduction or one or more contract accounts within the payroll deduction shall submit a written request to his/her agency payroll office. Any changes regarding the prepaid tuition contracts must be arranged by the employee with the Prepaid Higher Education Tuition Board.

If a state employee submits a request to cancel a deduction or a contract account within the deduction to his/her state agency, then the agency must send a copy of the request to the Prepaid Higher Education Tuition Board within two weeks of the effective date of the request.

Interagency Transfers

When a state employee transfers from one state agency to a second state agency, the second state agency may require the employee to provide copies of the payroll deduction authorization form for payroll files. Official documentation is also available from the Prepaid Higher Education Tuition Board.

Effective Date of Deduction Authorization

A state agency shall process an employee's prepaid tuition deduction documentation that defines a new deduction according to agency policy; however, the first deduction must be made from the employee's salary or wages paid no later than the first workday of the second month following the month in which the agency receives the authorization.

A state agency shall process an employee's prepaid tuition deduction documentation that requests a change or addition to the deduction according to agency policy; however, the change must be effective no later than with the deduction made from the employee's salary or wages the first workday of the second month following the month in which the agency receives the authorization.

A state agency shall process an employee's prepaid tuition deduction cancellation document that requests a cancellation of a deduction according to agency policy; however, the cancellation must be effective no later than the first workday of the second month following the month in which the agency receives the authorization. The agency shall notify the Prepaid Higher Education Tuition Board of the cancellation of any established payroll deductions within two weeks of the cancellation.

Authorization Forms

The Prepaid Higher Education Tuition Board is responsible for the creation and content of the payroll deduction authorization form that shall serve as authorization for payroll deduction. The board is authorized to create other official forms as needed.

Return of Authorization Forms

A state agency may return a payroll deduction authorization form to the employee that submitted the form if the form:

- Is incomplete, contains erroneous data, or is otherwise insufficient and makes it impossible for the agency to establish the deduction in accordance with the form; or
- Is for an individual who is not employed by the agency.

Payments of Deductions

Payments are made by totaling the deductions for all participating employees within a payroll document and making a payment to the Prepaid Higher Education Tuition Board for each payroll document. The detail report will list the account numbers which are affected by the payment submitted. Payments to the board will be in the form of warrants for funds held inside the state treasury and checks or electronic funds transfer for funds held outside the state treasury. Agencies will submit each warrant or check with the corresponding detail report.

An institution of higher education may make payments by electronic funds transfer (EFT) using an ACH format designated by the Comptroller's treasury operations division for the payment records. The payment records will identify the account number and the amount for each contract.

Payments may not be submitted to the Comptroller's treasury operations division before the effective date of the warrant or check or the settlement date of the electronic funds transfer.

Refunding Excessive Payments of Amounts Deducted

A refund for a deduction must be made when the amount deducted exceeds the amount that should have been paid to the Prepaid Higher Education Tuition Board. The refund will be accomplished by the agency subtracting the amount of the deduction from a subsequent payment to the board.

Responsibilities of State Agencies

Payroll deduction authorization forms are valid only if they were issued by the Prepaid Higher Education Tuition Board. A state agency or institution of higher education is not required to accept a payroll deduction authorization form if the agency believes the form contains an obvious alteration from the payroll deduction authorization form issued by the board.

A state agency or institution of higher education is required to report to the Comptroller's treasury operations division the account number and amount paid for each account with every deduction payment. The information may be provided by a detail report with warrants or checks or by payment records on the electronic funds transfer payment detail. The agency is responsible for ensuring that the report total exactly matches the amount of the warrant or check which the report details.

If a state agency cancels a payment to an employee after the agency has sent a detail report to the Comptroller's treasury operations division, the adjustment must be noted on the subsequent detail report when the warrant or check is sent to that division.

If the agency is unable to make the payroll deduction from salary or wages according to the rules and within the timeframes established by this policy, the agency shall advise the employee that it is the employee's responsibility to make payment and avoid penalty for late or non-payment.

Detail Reports

A state agency or institution of higher education that makes a deduction for an employee payable to the Prepaid Higher Education Tuition Board must submit a detail report to the Comptroller's treasury operations division with the warrant or check.

The detail report must include the name and social security number of each state employee from whose salary or wages a deduction was made, the account number and amount per account of the deduction made for each employee. This report shall also list any adjustments for overpayment or underpayment such as for cancellation and reissue. The details reported will include each payment (positive and negative) within an account number for each employee and a report total which will agree with the warrant or check issued to the Prepaid Higher Education Tuition Board. The agency is responsible for ensuring that the report total exactly matches the amount of the warrant or check which the report details. The agency must modify the report if additional adjustments to the details are required to match the warrant or check. (See Submission of Deduction Payments and Detailed Reports)

For warrants or checks paid on the first workday of the month, a state agency or institution of higher education shall submit the detail report to the Comptroller's treasury operations division not later than the fifth workday following the effective date of the warrant or check. The report must accompany the warrant or check. If the agency chooses to hand deliver the report, it must be received by the division with the warrant or check.

A state agency shall submit additional detail reports for deductions from salary or wages paid after the first workday of a month, i.e., supplemental payrolls. The detail report must accompany the warrant or check. The agency or institution of higher education must ensure that the detail report is received by the Comptroller's treasury operations division on or before the 14th of the month or the following workday to allow proper posting of the payments and eliminate the risk of penalty for late payment for the employee.

EFT Payment Records - If an institution of higher education submits the payment by electronic funds transfer, the payment detail will reflect the contract numbers and will ensure proper posting of the payments.

Submission of Deduction Payments and Detailed Reports

USPS Agencies: For agencies on the Uniform Statewide Payroll/Personnel System, the detailed reports are generated by the Comptroller and distributed directly to the Prepaid Higher Education Tuition Board.

Deduction from Payroll Payments Paid on the First Workday of the Month

Mail

For payrolls paid on the first workday of the month, the agency or institution of higher education shall submit the warrant or check for deposit in the state treasury and the detail report no later than the fifth workday following the effective date of the warrant or check. The warrant or check and detail report may be mailed to the state treasury at the following address:

*Texas Tomorrow Fund
Box 12018
Austin, Texas 78711-2018*

Hand Deliver

If the agency chooses to hand deliver the warrant or check and detail report, it may be hand delivered to the Comptroller's treasury operations division at the teller window, labeled *Texas Tomorrow Fund Lockbox* no later than the fifth workday following the effective date of the warrant or check.

EFT for Higher Education Agencies

For payrolls paid on the first workday of the month, the institution shall submit the EFT transaction for deposit in the state treasury by no later than the fifth workday following the settlement date of the payment transaction.

Deduction From Payroll Payments Paid on Supplemental Payrolls

Mail

If a deduction is made on a supplemental payroll, the agency or institution of higher education shall submit the warrant or check for deposit in the state treasury and the detail report on or before the 14th of the month or the following workday if the 14th is not a work day. The warrant or check and detail report may be mailed to the state treasury at the following address:

*Texas Tomorrow Fund
Box 12018
Austin, Texas 78711-2018*

Hand Deliver

If the deduction is made on a payment processed on a supplemental payroll, and the agency chooses to hand deliver the warrant or check and detail report, it must be hand delivered to the Comptroller's treasury operations division at the teller window, labeled *Texas Tomorrow Fund Lockbox*, on or before the 14th of the month or the following workday if the 14th is not a workday.

EFT for Higher Education Agencies

If a deduction is made for a payroll paid on a day other than the first workday of the month, i.e., supplemental payroll, the institution shall ensure submittal of the EFT transaction by no later than the 14th of the month or the following workday.

Retirement Plan Contributions, Mandatory

Applies to:

Each state agency or institution of higher education.

Sources:

- A. TEX. GOV'T CODE ANN. § 812.003(a)-(b) (Vernon 1994), § 815.402(a)(1) (Vernon Supp. 2000); 34 TEX. ADMIN. CODE § 69.1(2) (1999).
- B. TEX. GOV'T CODE ANN. §§ 822.001, 825.402(5), 825.403(a) (Vernon 1994), §§ 821.001(12), 822.002(a), 825.403(a) (Vernon Supp. 2000); 34 TEX. ADMIN. CODE §§ 25.25(a), 25.171, 25.172(e) (1999).
- C. TEX. GOV'T CODE ANN. §§ 830.002(b), 830.003, 830.101(a), 830.102(a), 830.202 (Vernon 1994), §§ 821.001(8), 830.201(a), 830.202(a) (Vernon Supp. 2000).
- D. TEX. GOV'T CODE ANN. §§ 832.001(a), (c), 835.101(a) (Vernon 1994). See also TEX. GOV'T CODE ANN. §§ 832.001(b), 835.103 (Vernon 1994).
- E. TEX. GOV'T CODE ANN. §§ 837.001(a), (c), 840.105(a)-(b) (Vernon 1994), § 840.102(a), (b)(1), (g) (Vernon Supp. 2000). See also TEX. GOV'T CODE ANN. § 837.001(b) (Vernon 1994).

Discussion:

See Appendix E for a listing of the Texas identification numbers of the various retirement programs. Contact the Employees Retirement System of Texas (ERS) or the Teacher Retirement System of Texas (TRS), as appropriate, for additional information about those programs.

- A. The employee class of membership in the ERS consists of “all employees and appointed officers of every department, commission, board, agency, or institution of the state” with certain listed exceptions. An office or employment that is included in the coverage of TRS, the Judicial Retirement System of Texas Plan One (JRS-1), or the Judicial Retirement System of Texas Plan Two (JRS-2) is not included in ERS. A member of the employee class must contribute 6.00 percent of compensation each month to ERS. The contribution must be made through payroll deduction.
- B. A person must be a member of TRS if the person is an employee of the “public school system” or was a member of TRS on August 31, 1981. **Public school** means “an educational institution or organization in this state that is entitled by law to be supported in whole or in part by state, county, school district, or other municipal corporation funds.” A person otherwise required to be a member of TRS may be excluded from membership under certain circumstances. One of the circumstances is when the person is eligible and elects to participate in the optional retirement program (ORP).

A member of TRS must contribute 6.40 percent of monthly compensation to TRS. The contribution must be made through payroll deduction.

- C. As indicated in the preceding discussion of TRS, a person who is required to be a member of TRS may exclude himself or herself if the person is eligible and elects to participate in ORP. Therefore, the person must be a member of either TRS or ORP. Only faculty members of institutions of higher education and the commissioner of education are eligible to participate in ORP. “Faculty member” is specifically defined. “Institution of higher education” includes the Texas Higher Education Coordinating Board, the Texas State Technical College, and the institutions included in the definition of “institution of higher education” in TEX. EDUC. CODE ANN. § 61.003 (Vernon Supp. 2000).

A person who is participating in ORP must contribute 6.65 percent of monthly compensation to the program. The contributions must be made in accordance with a salary reduction agreement, i.e., through payroll deduction.

- D. A person must be a member of JRS-1 if: (1) the person has never been eligible for membership in JRS-2; and (2) the person became a judge, justice, or commissioner of the supreme court, the court of criminal appeals, a court of appeals, a district court, or a commission to one of the preceding courts before September 1, 1985.

A member of JRS-1 must contribute 6.00 percent of monthly salary to the plan. The contribution must be paid through payroll deduction.

- E. A person must be a member of JRS-2 if: (1) the person has never been eligible for membership in JRS-1 or the Judicial Retirement System; and (2) the person is a judge, justice, or commissioner of the supreme court, the court of criminal appeals, a court of appeals, a district court, or a commission to one of the preceding courts anytime after August 31, 1985.

For compensation earned on or before December 31, 1989, a member of JRS-2 was required to contribute 6.00 percent of monthly salary to the plan, except that a member who accrued 20 years of service credit in JRS-2 ceased to make contributions. For compensation earned after December 31, 1989, the state picks-up the contributions that members of JRS-2 otherwise would make. The state pick-up must be offset, however, by a corresponding reduction in the cash salaries of the members, by an offset against future salary increases, or by a combination of the preceding. Generally speaking, the state pick-up is equivalent to a payroll deduction.

Retirement Plan Contributions, Voluntary

Applies to:

Each person eligible for membership in the elected class of membership in the Employees Retirement System of Texas (ERS).

Sources:

TEX. GOV'T CODE ANN. § 812.002(a), (c) (Vernon 1994), §§ 812.101(b), 815.402(a) (Vernon Supp. 2000).

Discussion:

A person may be a member of the elected class of membership in ERS if: (1) the person holds a state office that is normally filled by statewide election and that is not included in the coverage of the Judicial Retirement System of Texas Plan One or the Judicial Retirement System of Texas Plan Two; or (2) the person is a legislator; or (3) the person is a district or criminal district attorney to the extent the person receives a salary from the general revenue fund.

A person who wants to be a member of the elected class must complete and file a form with ERS. The person may terminate membership at any time.

A legislator who is a member of the elected class must contribute 8.00 percent of compensation to ERS. A non-legislator who is a member of the elected class must contribute 6.00 percent of compensation to ERS. In either case, the contributions must be made through payroll deduction.

See ERS for additional information about this deduction.

Retirement Service Credit, Purchasing

Applies to:

- A. Each person who wishes to establish or reestablish service credit in the Employees Retirement System of Texas (ERS).
- B. Each person who wishes to establish or reestablish service credit in the Judicial Retirement System of Texas Plan I (JRS-1).
- C. Each person who wishes to establish or reestablish service credit in the Judicial Retirement System of Texas Plan II (JRS-2).
- D. Each contributing member who wishes to establish or reestablish service credit in the Teacher Retirement System of Texas (TRS).

Sources:

- A. TEX. GOV'T CODE ANN. § 813.104(a) (Vernon Supp. 2000); 34 TEX. ADMIN. CODE § 71.14 (1999).
- B. TEX. GOV'T CODE ANN. § 833.105(a) (Vernon Supp. 2000); 34 TEX. ADMIN. CODE § 77.15 (1999).
- C. TEX. GOV'T CODE ANN. § 838.105(a)-(b) (Vernon Supp. 2000); 34 TEX. ADMIN. CODE § 77.15 (1999).
- D. TEX. GOV'T CODE ANN. §§ 825.410, 825.411(a)-(b), (f) (Vernon Supp. 2000); 34 TEX. ADMIN. CODE § 25.190(c) (1999).

Discussion:

- A. The board of trustees of ERS has adopted rules that provide procedures for establishing or reestablishing service credit in ERS through payroll deduction. A contributing member of ERS may cancel the deduction at any time.
- B. The board of trustees of ERS has adopted rules that provide procedures for establishing or reestablishing service credit in JRS-1 through payroll deduction. A member or contributing member of JRS-1 may cancel the deduction at any time.
- C. The board of trustees of ERS has adopted rules that provide procedures for establishing or reestablishing service credit in JRS-2 through payroll deduction. A member or contributing member of JRS-2 may cancel the deduction at any time.
- D. A contributing member who is otherwise eligible may establish or reestablish service creditable in TRS by making payments through payroll deduction. If the member's employer has picked-up the payments in accordance with an agreement between TRS and the member, the deduction is irrevocable for the period covered by the agreement. Otherwise, the deduction is terminable at the will of the member.

Instructions for establishing the deduction and reporting requirements may be obtained from the member benefits division of ERS or the benefits counseling division of TRS, as appropriate.

Agencies should list this type of deduction in the OTHER column of the Payroll Detail Sheet. The total deduction on the voucher must be listed in the NET AMOUNT column on separate deduct lines using the appropriate Texas identification numbers.

Savings Bonds Purchases

Applies to:

All state agencies.

Sources:

TEX. GOV'T CODE ANN. §§ 608.001(1), (4), 608.008, 608.009 (Vernon 1994), §§ 608.002-608.003, 608.005(a), 608.007(a), 608.010 (Vernon Supp. 2000).

Discussion:

An officer or employee of this state may voluntarily authorize the individual's department administrator to deduct from the individual's compensation an amount to be used to purchase savings bonds. A department administrator may withhold the amount authorized by the officer or employee. If the withholding is made, the department administrator shall make a deduction when the payroll is presented to the Comptroller for payment.

When the payroll of a state department is presented to the Comptroller for payment, the Comptroller shall pay the full amount deducted from the payroll to purchase savings bonds. The money received from the Comptroller shall be deposited with the Comptroller to be held in trust by the Comptroller until disbursed by the administrator to purchase the bonds.

A department administrator shall use money deducted and held in trust to purchase savings bonds on behalf of the individual who authorized the deduction. The bonds must be in the denomination designated by the individual, when an amount sufficient to make the purchase has been withheld. The administrator shall deliver the bonds immediately to the individual entitled to them or shall mail the bonds to the address designated by the individual in the individual's deduction authorization.

A deduction authorization from an officer or employee of this state must be in writing or recorded by electronic means and state the period for which the authorization is to be in effect, the amount to be deducted, and the denomination of the bonds to be purchased.

A department administrator shall stop deducting money for savings bond purchases from the compensation of an officer or employee if:

- The individual stops being an officer or employee of the department; or
- The individual notifies the department administrator by electronic means or in writing that the individual elects to cancel the deduction authorization; or
- The arrangement for deducting money by department administrators is terminated.

On termination of the deduction, any money that has been deducted but has not yet been used to purchase savings bonds shall be remitted immediately to the individual.

A department administrator shall keep records at all times that itemize the money deducted and disbursed by the administrator for the purchase of savings bonds.

State agencies payments of these deductions to the Federal Reserve Bank of Kansas City Financial Services must be made electronically.

For the purpose of this deduction:

- **Department administrator** means the chief administrator of a department of state government of which an individual executing an authorization is an officer or employee.
- **Savings bonds** means United States savings bonds.

Spousal Maintenance, Garnishments for

Applies to:

Each state agency or institution of higher education.

Sources:

Tex. Fam. Code Ann. § 8.001 (Vernon 1998), § 8.002(b) (Vernon Supp. 2000).

Discussion:

A state agency that receives a court order to garnish a person's wages for the purpose of enforcing a spousal maintenance order shall comply with the garnishment order.

For this purpose, **maintenance** means an award in a suit for dissolution of a marriage of periodic payments from the future income of one spouse for the support of the other spouse.

State Income Tax Withholding

Applies to:

Each state agency or institution of higher education.

Source:

State law.

Discussion:

A state employee who lives or works outside Texas may be subject to state income tax withholding under the laws of the state in which the employee lives or works. See the applicable tax laws for each state.

Student Loan Garnishments

Applies to:

Each state agency or institution of higher education.

Sources:

20 U.S.C.A. § 1095a(a), (e) (West 2000); TEX. GOV'T CODE ANN. § 659.002(d) (Vernon Supp. 2000).

Discussion:

A state agency or an institution of higher education must comply with an order to garnish the disposable pay of an individual who is not currently making required repayments of a guaranteed student loan. The order may be issued by a guaranty agency (such as the Texas Guaranteed Student Loan Corporation), a private entity with which a guaranty agency has contracted to collect the loan, or the secretary of education. An agency or institution that fails to comply is liable for the amount not withheld plus attorneys' fees, costs, and possibly punitive damages.

The amount of the garnishment may not exceed ten percent of the individual's disposable pay, except that a greater percentage may be deducted with the individual's consent.

For the purpose of this deduction, **disposable pay** means that part of an individual's compensation from an employer that remains after the deduction of any amounts required by law to be withheld.

The amount withheld from an individual's disposable pay should be made payable to the agency or other payee listed on the garnishment order. A single Texas identification number (TIN) has been established for each agency or payee that the Comptroller is aware of. See Appendix D for a list of the TINs.

If an agency or institution receives an order involving a new payee, the agency or institution should contact the claims division's expenditure research and assistance section at (512) 475-1097 so that a TIN for that payee may be established and the USPS tables may be updated.

TexaSaver (Section 401(k) deferred compensation plan)

Applies to:

Each state agency or institution of higher education.

Sources:

I.R.C. §§ 401(k), 402(g)(1), (5); TEX. GOV'T CODE ANN. § 609.001(1)-(2), (8), (10) (Vernon 1994), §§ 609.007(c), 609.502(a), (c) (Vernon Supp. 2000).

Discussion:

The board of trustees of the Employees Retirement System of Texas (ERS) is the trustee and plan administrator of an employees' deferred compensation plan, the federal income tax treatment of which is governed by Section 401(k) of the Internal Revenue Code of 1986 ("TexaSaver plan").

The board of trustees may contract with an employee of a state agency that participates in the TexaSaver plan for deferment of any part of the employee's compensation. The contract must provide for the employee's consent to an automatic payroll deduction in an amount equal to the deferred amount. The deferrals and any investment income earned on those deferrals are not subject to federal income taxation until they are paid or otherwise made available to the employee.

Any questions about the TexaSaver plan should be directed to ERS.

For the purpose of this deduction:

- **Employee** means an individual who is an officer or employee of a state agency.
- **Institution of higher education** has the meaning assigned by TEX. EDUC. CODE ANN. § 61.003 (Vernon Supp. 2000), except the term does not include a public junior college.
- **State agency** means a board, commission, office, department, or other agency in the executive, judicial, or legislative branch of state government, including an institution of higher education.

Deductions Specific to Institutions of Higher Education

Contributions to Institutions of Higher Education or Nonprofit Organizations that Support Those Institutions

Applies to:

Each institution of higher education.

Source:

TEX. EDUC. CODE ANN. § 51.946 (Vernon Supp. 2000), as added by Act of May 17, 1999, 76th Leg., R.S., ch. 307, § 1, 1999 Tex. Gen. Laws 1211, 1211-2.

Discussion:

An employee of an institution of higher education may authorize a deduction each pay period from the employee's salary or wage payment for:

- A contribution to an institution of higher education; or
- A charitable contribution to a nonprofit organization the purpose of which is to support the programs of an institution of higher education.

To be eligible to receive charitable contributions under this type of deduction, a nonprofit organization must comply with the rules adopted under TEX. GOV'T CODE ANN. § 2255.001 (Vernon 2000) by the institution of higher education that the organization supports.

For the purpose of this deduction, **institution of higher education** has the meaning assigned by TEX. EDUC. CODE ANN. § 61.003 (Vernon Supp. 2000).

English Courses for Faculty Members

Applies to:

Certain faculty members of institutions of higher education (other than medical or dental units).

Source:

TEX. EDUC. CODE ANN. § 51.917(a)(1)-(2), (b), (f) (Vernon 1996).

Discussion:

The governing board of each institution of higher education is required to establish a program or short course the purpose of which is to:

- Assist faculty members whose primary language is not English to become proficient in the use of English; and

- Ensure that courses offered for credit at the institution are taught in English and that all faculty members are proficient in the use of English.

The faculty member must pay for the cost of the course. The payment must be made through payroll deduction from the faculty member's salary.

For the purpose of this deduction:

- **Institution of higher education** has the meaning assigned by TEX. EDUC. CODE ANN. § 61.003 (Vernon Supp. 2000), except that the term does not include a medical or dental unit.
- **Faculty member** means a person who teaches a course offered for academic credit by an institution of higher education, including a teaching assistant, an instructor, a lab assistant, a research assistant, a lecturer, an assistant professor, an associate professor, and a full professor.

Football Coaches Plan, Contributions to a Qualified

Applies to:

Each football coach that is entitled to participate in a qualified football coaches plan.

Source:

TEX. EDUC. CODE ANN. § 51.926(a)(1), (c)(1)-(2) (Vernon 1996).

Discussion:

A football coach who is entitled to participate in a qualified football coaches plan may enter into an agreement with an institution of higher education for the institution to reduce the coach's salary by the amount contributed to the plan. In general, this type of salary reduction is equivalent to a payroll deduction.

For the purpose of this deduction:

- **Institution of higher education** has the meaning assigned by TEX. EDUC. CODE ANN. § 61.003 (Vernon Supp. 2000).
- **Qualified football coaches plan** has the meaning assigned by Section 1002(37)(F)(ii) of Title 29 of the United States Code.

Parking Fees

Applies to:

Each institution of higher education.

Sources:

TEX. GOV'T CODE ANN. §§ 659.201, 659.202(a), 659.204(a)
(Vernon Supp. 2000).

Discussion:

An employee of an institution of higher education may authorize in writing a deduction each pay period from the employee's salary or wage payment for the payment of parking fees charged by the institution or for the purchase of a parking permit from an institution of higher education. The deduction authorization may be changed or revoked at any time.

For the purpose of this deduction, **institution of higher education** has the meaning assigned by TEX. EDUC. CODE ANN. § 61.003 (Vernon Supp. 2000).